

## Bureau of Industry and Security, Commerce

## § 784.1

784.4 Notification, duration and frequency of complementary access.

784.5 Subsidiary arrangements.

784.6 Post complementary access activities.

AUTHORITY: United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109-401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101-8181); Executive Order 13458 (February 4, 2008).

SOURCE: 73 FR 65128, Oct. 31, 2008, unless otherwise noted.

### § 784.1 Complementary access: General information on the purpose of complementary access, affected locations, and the role of BIS.

(a) *Overview.* The Additional Protocol requires that the United States provide the IAEA with complementary access to locations specified in the U.S. declaration. The IAEA may request and be given complementary access to locations in the United States that are not included in the U.S. declaration as agreed to by the U.S. Government. The IAEA, upon request, will be granted complementary access to locations in the United States in accordance with the provisions of § 784.3 of the APR, which describes the scope and conduct of complementary access.

(b) *Purposes authorized under the APR.* The APR authorize the conduct of complementary access, at locations in the United States, for the following purposes.

(1) *Declared uranium hard-rock mines and ore beneficiation plants.* Complementary access may be conducted, on a selective basis, to verify the absence of undeclared nuclear material and nuclear related activities at reportable uranium hard-rock mines and ore beneficiation plants (see § 783.1(a)(3) of the APR).

(2) *Other locations specified in the U.S. declaration and locations requested by the IAEA that are not included in the U.S. declaration as agreed to by the U.S. Government.* Complementary access may be conducted at other locations specified in the U.S. declaration (i.e., locations required to submit reports to BIS pursuant to § 783.1(a)(1), (a)(2), or (b) of the APR), and locations requested by the IAEA and agreed to by the U.S. Government, to resolve questions relating to the correctness and completeness of the information provided in the U.S.

declaration or to resolve inconsistencies relating to that information.

(i) In the event that the IAEA has a question about, or identifies an apparent inconsistency in, information contained in the U.S. declaration (e.g., information based on reports submitted to BIS by one of these locations, pursuant to § 783.1(a)(1), (a)(2), or (b) of the APR), the IAEA will provide the U.S. Government with an opportunity to clarify or resolve the question or inconsistency. The IAEA will not draw any conclusions about the question or inconsistency, or request complementary access to a location, until the U.S. Government has been provided with an opportunity to clarify or resolve the question or inconsistency, unless the IAEA considers that a delay in access would prejudice the purpose for which the access is sought.

(ii) Upon receipt of a request from the IAEA for clarification concerning information contained in the U.S. declaration, BIS will provide written notification to the U.S. location. The U.S. location must provide BIS with all of the requested information to clarify or resolve the question or inconsistency raised by the IAEA. Unless informed otherwise by BIS, the U.S. location will have 15 calendar days from its receipt of written notification to submit the required forms to BIS (see the *Supplemental Information Report* requirements in § 783.1(d) of the APR).

(c) *Locations subject to complementary access.* All locations specified in the U.S. declaration and other locations requested by the IAEA and agreed to by the U.S. Government are subject to complementary access by the IAEA. In cases where access cannot be provided to locations specified by the IAEA, BIS may seek to provide complementary access to adjacent locations or to satisfy the purposes of complementary access (see paragraph (b) of this section) through other means.

(d) *Responsibilities of BIS.* As the lead U.S. Government agency and point of contact for organizing and facilitating complementary access pursuant to the APR, BIS will:

(1) Serve as the official U.S. Government host to the IAEA inspection team;

## § 784.2

(2) Provide prior written notification to any location that is scheduled to undergo complementary access;

(3) Take appropriate action to obtain an administrative warrant in the event that a location does not consent to complementary access;

(4) Upon request of the location, dispatch an advance team, if time and other circumstances permit, to the location to provide administrative and logistical support for complementary access and to assist with preparation for such access;

(5) Accompany the IAEA Team throughout the duration of complementary access;

(6) Assist the IAEA Team with complementary access activities and ensure that each activity adheres to the provisions of the Additional Protocol and to the requirements of the APR and the Act, including the conditions of any warrant issued thereunder; and

(7) Assist in the negotiation and development of a location-specific subsidiary arrangement between the U.S. Government and the IAEA, if appropriate (see § 784.5 of the APR).

NOTE TO § 784.1(d): BIS may invite representatives from other U.S. Government agencies to participate as members of the Advance and Host Teams for complementary access. The Host Team will not include employees of the Environmental Protection Agency, the Mine Safety and Health Administration, or the Occupational Safety and Health Administration of the Department of Labor.

### § 784.2 Obtaining consent or warrants to conduct complementary access.

(a) *Procedures for obtaining consent.* (1) For locations specified in the U.S. declaration and other locations specified by the IAEA, BIS will seek consent pursuant to IAEA complementary access requests. In instances where the owner, operator, occupant or agent in charge of a location does not consent to such complementary access, BIS will seek administrative warrants as provided by the Act.

(2) For locations specified by the IAEA where access cannot be provided, BIS may seek consent from an adjacent location pursuant to an IAEA complementary access request.

(b) *Who may give consent.* The owner, operator, occupant or agent in charge

## 15 CFR Ch. VII (1–1–16 Edition)

of a location may consent to complementary access. The individual providing consent on behalf of the location represents that he or she has the authority to make this decision.

(c) *Scope of consent.* (1) When the owner, operator, occupant, or agent in charge of a location consents to a complementary access request, he or she is agreeing to provide the IAEA Team with the same degree of access as that authorized under § 784.3 of the APR. This includes providing access for the IAEA Team and Host Team to any area of the location, any item on the location, and any records that are necessary to comply with the APR and allow the IAEA Team to accomplish the purpose of complementary access, as authorized under § 784.1(b)(1) or (b)(2) of the APR, except for the following:

(i) Information subject to the licensing jurisdiction of the Directorate of Defense Trade Controls (DDTC), U.S. Department of State, under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130)—see § 784.3(b)(3) of the APR, which states that such access cannot be provided without prior U.S. Government authorization; and

(ii) Activities with direct national security significance to the United States, or locations or information associated with such activities.

(2) The Host Team Leader is responsible for determining whether or not the IAEA's request to obtain access to any area, building, or item, or to record or conduct the types of activities described in § 784.3 of the APR is consistent with the Additional Protocol and subsidiary arrangements to the Additional Protocol.

### § 784.3 Scope and conduct of complementary access.

(a) *General.* IAEA complementary access shall be limited to accomplishing only those purposes that are appropriate to the type of location, as indicated in § 784.1(b) of the APR and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of such purposes. No complementary access may take place without the presence of a U.S. Government Host Team. No information of direct national security